11 December 2018

RrSG Response to the Initial Report of the new gTLD Auction Proceeds Cross Community Working Group

The Registrar Stakeholder Group (RrSG) appreciates the opportunity to comment on the Initial Report of the New gTLD Auction Proceeds Cross-Community Working Group. The RrSG commends the CCWG for its effort and resulting work.

The RrSG generally supports Preliminary CCWG Recommendation #2, but with the qualifiers addressed below regarding Preliminary CCWG Recommendation #8. The RrSG supports Preliminary CCWG Recommendations # 3, 4, 6, 9, and 10.

The RrSG does not support the CCWG-preferred mechanisms (either A or B) as set forth in Recommendation #1 and offers specific comments regarding the following proposed mechanisms and other Preliminary CCWG Recommendations.

Community Involvement

The role of the community in the disposition of new gTLD proceeds is only implied in this document and is a significant missing element. We strongly believe that a representative group from the ICANN community should be the group responsible for reviewing and approving grants under this program and should also play a significant role in the follow-up review of the program.

Further, the role of ICANN Org in any of the approaches should be limited to oversight of the grant-making process in order to ensure compliance with laws and with ICANN's mission.

Our view on which of mechanism A-D should be employed is fully informed by the above belief and our comments below, preferring mechanism C should be read in that light. Mechanism A could be structured to accommodate the appropriate role of the community, but it would create more risk of ICANN Org controlling, rather than overseeing, the process.

Proposed Mechanism A-D

1. **Mechanism A (Internal ICANN Department) and Mechanism B (ICANN + External Organization)**

Both Mechanisms A and B would require the creation of a new department within ICANN Org to perform work that is clearly outside the scope of ICANN Org's mission. ICANN's mission is clear: "to ensure the stable and secure operation of the Internet's unique identifier systems." The RrSG fails to see how grant management falls within that mission.

Further, ICANN Org's expertise does not lend itself to grant management. While the CCWG points to ICANN Staff's ability to support public relations, external content, audit, legal, and investment activities, the RrSG suggests that this may be a significant assumption in at least some areas, as the (for example) legal and investment issues ICANN Org must address today are substantially different from that of a grant funding organization. The synergies that could be created by using Mechanism A or B in no way override the fact that these activities are not within ICANN Org's mission.

The RrSG would also like to point out that ICANN Org's current mission requires significant work effort from the ICANN Board, ICANN Org, and the entire ICANN community - a work effort that is already strained to maximum capacity and requires continued focus.

For these reasons, the RrSG strongly discourages the selection of either of these mechanisms.

2. **Mechanism C (ICANN Foundation)**

While Mechanism C would involve creation of a new charitable structure separate from ICANN and additional upfront costs, this option, above all others, most lends itself to protections against self-dealing and will ensure measures are taken to avoid conflict of interest. The very separate mission of this grant management work requires separate governance. Additionally, given the temporary nature of the auction proceeds, having a separate structure will make closing down the structure a more simple process. For example, part of the structure of this separate entity could be that employees are contracted for X period of time and must have expertise in Y. Employees of the new structure should not be current or prior ICANN employees. As a result, the RrSG recommends the selection of Mechanism C.

3. Mechanism D (External Entity)

Mechanism D is not a viable option if the required entity is not readily available.

Preliminary CCWG Recommendation #5

While the CCWG has not yet come to agreement on whether ICANN Org or a constituent part thereof should be a beneficiary of some of the auction proceeds, the RrSG strongly discourages the CCWG from allowing use of any auction proceeds for ICANN Org or a constituent part thereof.

Preliminary CCWG Recommendation #8

While we understand and support the notion of capacity building and supporting underserved populations, we do not feel it is appropriate for ICANN Org or a constituent part to make determinations regarding which underserved populations are in need, or where they think capacity building is needed. Rather, representatives of underserved populations should approach the ICANN Foundation regarding a request for funds and/or the need for capacity building.

Need for the CCWG to ensure the role of the community

We view the CCWG charter as necessarily dealing with who should be reviewing grants and who should be choosing which projects to fund. As noted above, this is implied, but not express, in the initial report.

We feel strongly that this should be the ICANN community.

This is a significant omission in the initial report. We believe this should either be made clear in a subsequent draft or, if there is not clarity on this point, then the existing CCWG should reconstitute for a brief period, we suggest no less than three and no more than six months, to settle this matter. It is the most important element of the whole project in our view.

The RrSG does not have a specific comment on the remainder of the content of the initial report.

Sincerely,

Graeme Bunton